10/822,003   6
F02-167191/UK

REMARKS

Claims 1-17 and 22-24 are all the claims presently pending in the application. Claims 4-5, 7-8, 12-13 and 15-17 have been withdrawn. Claims 1 and 10 have been amended to more particularly define the invention.

It is noted that the claim amendments are made only for more particularly pointing out the invention, and not for distinguishing the invention over the prior art, narrowing the claims or for any statutory requirements of patentability. Further, Applicant specifically states that no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Claims 1-2, 6, 10 and 14 and 22 stand rejected under 35 U.S.C. § 102(b) as being allegedly unpatentable over Kojima et al. (US Patent 5,638,136).

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Kojima in view of Bertolussi (US Patent 6,292,575).

Claims 9 and 11 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Kojima in view of Yang et al. (US Patent 6,580,810).

Claims 23-24 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Kojima in view of Sorimachi (US Patent 4,916,302).

These rejections are respectfully traversed in view of the following discussion.

I.   THE CLAIMED INVENTION

An exemplary aspect of the claimed invention (e.g., as recited in claim 1) is directed to a method for detecting whether an image of a characteristic portion exists in an image to be processed, including sequentially cutting plural images having a predetermined size from the image to be processed, and comparing the cut images with verification data corresponding to the image of the characteristic portion.

Importantly, the method also includes **setting upper and lower limitations of a size range of a search window for the image of the characteristic portion with reference to the size of the image to be processed, based on information about a distance between a subject and a location of imaging the subject, obtained when the image to be processed has been photographed, thereby limiting the size of the cut images to be compared with the verification**

10/822,003   7
F02-167191/UK

data (Application at Figure 2; page 36, lines 19-24).   This may help to reduce a number of

times that a comparison is performed, to speed up processing and increase precision.

II.   FINALITY OF OFFICE ACTION WAS PREMATURE:

Applicant would point out that the Final Office Action of August 1, 2008 was the

FIRST time that the Examiner has ever addressed the limitation of "upper and lower

limitations" of a size range of the image of the characteristic portion, and therefore, the

finality of the Office Action was premature.

In particular, pplicant notes that the Amendment filed on July 2, 2008 added to claim

1 the limitation "upper and lower limitations" of a size range of the image of the characteristic

portion. **Prior to this Amendment the Examiner had never examined any claim in the**

present Application that included this feature. Therefore, Applicant respectfully submits

that the July 2, 2008 Amendment clearly raised new issues that would require further search

by the Examiner.

Indeed, Applicant would point out that the August 1, 2008 Office Action is the first

instance that the Examiner has asserted that "*[t]he range RA*", in Kojima, "*includes both*

horizontal and vertical (or 'upper and lower') limitations, as shown in figure 110 and as

discussed in col. 43 lines 27-32. This feature is also disclosed by Kojima as shown in figures

97-121 and throughout the corresponding sections of the detailed description...".

That is the Examiner surprisingly attempts to equate "**horizontal and vertical**"

limitations in Kojima with the **upper and lower limitations on a size range** of the image of

the characteristic portion of the claimed invention. The Examiner's allegation is like

"comparing apples and oranges" and is completely unreasonable.

Applicant again notes that MPEP 706.07 provides that before final rejection is in

order:

> "*[t]he applicant who is seeking to define his or her invention in claims*
>
> *that will give him or her the patent protection to which he or she is justly*
>
> *entitled should receive the cooperation of the examiner to that end, and not*
>
> *be prematurely cut off in the prosecution of his or her application*", and
>
> "*[t]he examiner should never lose sight of the fact that in every case*
>
> *the applicant is entitled to a full and fair hearing, and that a clear issue*

10/822,003   8
F02-167191/UK

between applicant and examiner should be developed, if possible, before

appeal" (emphasis added).

Applicant respectfully submits that **he has never had an opportunity to address the**
Examiner's erroneous assertion that Kojima teaches upper and lower limitations of a size
range of the image of the characteristic portion, in figure 110, col. 43 lines 27-32, and figures
97-121.

Therefore, Applicant respectfully submits that he has been prematurely cut off in the
prosecution of his Application, and that he has <u>not</u> been given a full and fair hearing.
Therefore, the finality of the Office Action is premature and should be withdrawn.

III.   THE ALLEGED PRIOR ART REFERENCES

A.   Kojima

The Examiner alleges that Kojima anticipates the invention of claims 1-2, 6, 10, 14
and 22. Applicant submits, however, that there are features of the claimed invention that are
not taught or suggested by Kojima.

Kojima discloses a method of flesh-tone area detection which is intended to
selectively detect a flesh-tone area using simple circuitry (Kojima at Abstract; col. 5, lines 62-
64).

However, Applicant submits that Kojima does not teach or suggest *"setting upper and*
lower limitations of a size range of a search window for the image of the characteristic
portion with reference to the size of the image to be processed, based on information about a
distance between a subject and a location of imaging the subject, obtained when the image to
be processed has been photographed, thereby limiting the size of the cut images to be
compared with the verification data", as recited, for example, in claim 1, and similarly recited
in claims 10 and 22 (Application at Figure 2; page 36, lines 19-24). As noted above, this
may help to reduce a number of times that a comparison is performed, to speed up processing
and increase precision.

Clearly, this feature is not taught or suggested by Kojima.

Indeed, as noted above, the Examiner attempts to rely on figure 110, col. 43 lines 27-
32, and figures 97-121 to support his position. This is clearly unreasonable.

10/822,003   9
F02-167191/UK

In fact, Applicant would point out that Kojima teaches that RA is a range "with which to detect the width of a human face" and that RA is determined based on Expression 11 (RA=Rk(Z/L), where Rk is a standard size of a human face with the zoom lens 44 at its shortest focal length Z and the object distance L set at a predetermined reference distance) (Kojima at col. 42, lines 59-65). Kojima also teaches that "[b]ased on the range RA supplied, the memory 214 outputs data as shown in Figure 110 using a LUT (look-up table) method" (Kojima at col. 43, lines 8-10). Kojima st

That is, contrary to the Examiner's allegations, RA is not a "search window", but is simply a range within detection position, R, with which to detect the width of a human face.

Moreover, even assuming, arguendo, that RA might somehow be confused with a search window for the image of the characteristic portion, **nowhere does Kojima teach or suggest setting upper and lower limitations of a size range of RA**. Indeed, the Examiner surprisingly attempts to equate what the Examiner describes as the "horizontal and vertical" limitations of RA with the "upper and lower limitations of a size range of a search window" as in the claimed invention.

Indeed, as noted above, RA in Kojima refers to the range within which to detect the width of a human face. In particular, as illustrated in Figure 110 in Kojima, RA may be said to have a width (e.g., the number of non-shaded pixels in the x direction) and a height (e.g., the number of non-shaded pixels in the y direction), but the width and height of RA cannot be confused with the upper and lower limitations of a size range of a search window.

Therefore, nowhere does Kojima teach or suggest **setting upper and lower limitations of a size range of a search window for the image of the characteristic portion with reference to the size of the image to be processed, based on information about a distance between a subject and a location of imaging the subject, obtained when the image to be processed has been photographed, thereby limiting the size of the cut images to be compared with the verification data**, as recited, for example, in claim 1.

Therefore, Applicant submits that there are features of the claimed invention that are not taught or suggested by Kojima. Therefore, the Examiner is respectfully requested to withdraw this rejection.

10/822,003   10
F02-167191/UK

B.   Bertolussi, Yang and Sorimachi

The Examiner alleges that Kojima would have been combined with Bertolussi to form the invention of claim 3, with Yang to form the invention of claims 9 and 11, and with Sorimachi to form the invention of claims 23-24. Applicant submits, however, that these references would not have been combined and even if combined, the combination would not teach or suggest each and every feature of the claimed invention.

Bertolussi discloses a facial recognition and verification method which is intended to compare an image with a stored image and determine if a match exists in real time. The method employs a motion detection stage, blob stage and a color matching stage at the input to localize a region of interest in an image (Bertolussi at col. 1, line 66-col. 2, line 10).

Yang discloses a method of images processing in three dimensional head motion tracking which includes tracking three facial feature points corresponding to consecutive video frames (Yang at Abstract).

Sorimachi discloses a distance measuring apparatus and a method in which two dimensionally arranged light-receiving elements are used as illumination distribution measuring means (Sorimachi at Abstract).

However, Applicant respectfully submits that these alleged references are <u>unrelated</u>. Indeed, no person of ordinary skill in the art would have considered combining these disparate references, <u>absent impermissible hindsight</u>.

In fact, Applicant submits that <u>the references provide no motivation or suggestion</u> to urge the combination as alleged by the Examiner. Indeed, these references clearly do not teach or suggest their combination. Therefore, Applicant respectfully submits that one of ordinary skill in the art would not have been so motivated to combine the references as alleged by the Examiner. Therefore, the Examiner has <u>failed to make a prima facie case of obviousness</u>.

Moreover, neither Kojima, nor Bertolussi, nor Yang, nor Sorimachi, nor any alleged combination teaches or suggests *"setting upper and lower limitations of a size range of a search window for the image of the characteristic portion with reference to the size of the image to be processed, based on information about a distance between a subject and a location of imaging the subject, obtained when the image to be processed has been photographed, thereby limiting the size of the cut images to be compared with the verification*

10/822,003   11
F02-167191/UK

data", as recited, for example, in claim 1, and similarly recited in claims 10 and 22

(Application at Figure 2; page 36, lines 19-24). As noted above, this may help to reduce a

number of times that a comparison is performed, to speed up processing and increase

precision.

Clearly, this feature is not taught or suggested by the cited references.

Indeed, with respect to Bertolussi, the Examiner again attempts to rely on Figure 5 and

col. 9, lines 33-50 to support his position. The Examiner's assertions are completely

unreasonable.

Indeed, this passage and figure simply discloses scaling eigenheads to various sizes.

Nowhere in this passage and figure or anywhere else does Bertolussi teach or suggest <u>setting</u>

<u>upper and lower limitations of a size range of a search window for the image of the</u>

<u>characteristic portion with reference to the size of the image to be processed, based on</u>

<u>information about a distance between a subject and a location of imaging the subject,</u>

<u>obtained when the image to be processed has been photographed, thereby limiting the size of</u>

<u>the cut images to be compared with the verification data</u>, as recited, for example, in claim 1.

Further, with respect to Yang, the Examiner attempts to rely on Figures 7a-7b to

support his position. The Examiner is incorrect.

Indeed, these drawings simply illustrate a relation between two consecutive video

frames (Yang at col. 3, lines 49-50). Yang simply teaches that the search window 75 is

smaller than the correlation window 77 (Yang at col. 7, lines 1-14). Nowhere in this passage

and figure or anywhere else does Bertolussi teach or suggest <u>setting upper and lower</u>

<u>limitations of a size range of a search window for the image of the characteristic portion</u>

<u>with reference to the size of the image to be processed, based on information about a distance</u>

<u>between a subject and a location of imaging the subject, obtained when the image to be</u>

<u>processed has been photographed, thereby limiting the size of the cut images to be compared</u>

<u>with the verification data</u>, as recited, for example, in claim 1.

Further, with respect to Sorimachi, the Examiner again attempts to rely on Figures 1A

and 1B to support his position. However, these drawings simply teach a "stereo method" for

measuring a distance (Sorimachi at col. 1, lines 41-61). That is, nowhere in this drawings or

anywhere else, does Sorimachi teach or suggest <u>setting upper and lower limitations of a</u>

<u>size range of a search window for the image of the characteristic portion with reference to</u>

10/822,003
F02-167191/UK

12

the size of the image to be processed, based on information about a distance between a subject and a location of imaging the subject, obtained when the image to be processed has been photographed, thereby limiting the size of the cut images to be compared with the verification data,, as in the claimed invention.

Thus, neither Bertolussi, nor Yang, nor Sorimachi make up for the deficiencies of Kojima.

Therefore, Applicant submits that these references would not have been combined and even if combined, the combination would not teach or suggest each and every feature of the claimed invention. Therefore, Applicant respectfully request that the Examiner withdraw this rejection.

III. FORMAL MATTERS AND CONCLUSION

In view of the foregoing, Applicant submits that claims 1-17 and 22-24, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

10/822,003
F02-167191/UK

13

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Attorney's Deposit Account No. 50-0481.
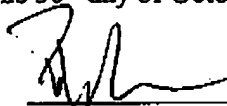
Respectfully Submitted,

Date: 10/30/08

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CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that I am filing this Amendment Under 37 CFR §1.116 by facsimile with the United States Patent and Trademark Office to Examiner Jeffrey S. Smith, Group Art Unit 2624 at fax number (571) 273-8300 this 30th day of October, 2008.

Phillip E. Miller, Esq.
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